BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Subscriber	)	
Carrier Selection Changes	)	
Provisions of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of	)	
Consumers' Long Distance Carriers	)	

REPLY COMMENTS OF THE OHIO CONSUMERS' COUNSEL

Robert S. Tongren, in his official capacity as the Ohio Consumers' Counsel (OCC), is pleased to offer his reply to certain of the comments filed in this docket on September 15, 1997.[1] OCC will comment on issues pertaining to Prohibition under Section 258 (a) and to Liability under Section 258(b). Since his comments are limited, the OCC will use the headings of only those issues which will be addressed.

[1] OCC herein replies to the following commenters: Ameritech; AT&T Corp. (AT&T); Cincinnati Bell Telephone Company (CBT); National Consumers League (NCL); New York State Department of Public Service (NYSDPS); North Carolina Public Staff Utilities Commission (Public Staff); Sprint Corporation (Sprint); Texas Office of Public Utility Counsel (TOPC); and the United States Telephone Association (USTA).

APPLICATION OF THE VERIFICATION RULES TO ALL TELECOMMUNICATIONS CARRIERS (PARAS. 14-15)

USTA argues that the verification rules should apply to all telecommunications carriers equally. Equal application recognizes that incumbent LECs and competitive LECs compete in the local exchange market by providing different services to attract and retain customers. However, equal application fails to recognize that the local exchange market does not enjoy full and effective competition. In addition, equal application does not give credence to the inherent cost involved in the verification process. Thus, the verification process should be applied only to those carriers who have obtained a threshold level of complaints.

VIABILITY OF THE "WELCOME PACKAGE" VERIFICATION OPTION (PARAS. 16-18)

OCC agrees with the positions advanced by NYSDPS and the Public Staff to eliminate the "welcome package" verification option. NYSDPS recognizes that, in theory, the welcome package is sent only to those customers who have requested a change in carriers. However, NYSDPS also recognizes that theory often diverges from practice. As this commenter explained, customer consent to change is sometimes not obtained during the telemarketing solicitation because customers are confused by the solicitation. The Public Staff appropriately commented that the welcome package verification option is too questionable a practice to even be used as a secondary verification measure.

Unlike NYSDPS and the Public Staff, AT&T supports retention of the "welcome package" option, with modifications. OCC strongly disagrees with this position. Retention of the "welcome package" verification option does not advance consumer

protection nor competition. These objectives are further thwarted by AT&T's proposed modifications.

AT&T's modifications include the elimination of the requirement that the "welcome package" contain the identity of the current carrier. AT&T posits that such information is superfluous as the subscriber should know the identity of his current carrier. This proposed modification ignores the state of customer confusion and ignores the vast slamming problem. Identification of current carrier is an additional measure to aid the customer in determining whether service is actually being provided by the carrier of choice.

The other modification proposed by AT&T is also problematic. AT&T recommends the extension of the maximum mailing interval for the "welcome package" from three business days to seven business days. AT&T believes that this modification will allow more cost-effective follow-up verification. The underlying purpose of the three business day rule is to give prompt and effective implementation to the customer's choice. AT&T's modification would thus delay the implementation of the customer's choice. Thus, it does not comport with the purpose of the Telecommunications Act of 1996.

APPLICATION OF THE VERIFICATION RULES TO IN-BOUND CALLS (PARAS. 19-20)

USTA disagrees with the Commission's tentative conclusion to extend verification procedures to in-bound calls.[2] USTA argues that such a rule would be excessive because the in-bound call affirmatively demonstrates the subscriber's desire to switch carriers.

[2] Similarly, CBT submits that in-bound verification is not necessary.

OCC disagrees with USTA. The TOPC provides a succinct response to this argument: Without in-bound verification, subscribers are left in the unenviable position of having to prove that an in-bound call was never made to the unauthorized carrier. OCC thus supports the position advanced by the TOPC that the telecommunications carriers should have the burden of proving that each and every carrier change was authorized by the subscriber.

VERIFICATION AND PREFERRED CARRIER FREEZES (PARAS. 21-24)

NYSDPS comments that PIC change verification procedures should apply to PC freezes. NYSDPS correctly notes that a PC freeze is the only protection available to consumers against slamming. This commenter adds that PC freezes do not prevent customer choice; instead, PC freezes protect the subscribers from unscrupulous carriers. In addition, NYSDPS argues that telecommunications carriers should be required to offer freeze options to subscribers, at no cost.

TOPC advocates that all existing carriers should educate their subscribers regarding the right to request a freeze.[3] TOPC adds that the carrier should also provide the means by which subscribers could acquire the desired protection against slamming, such as a response card which would immediately effectuate the PC freeze.

The recommendations advanced by NYSDPS and TOPC enhance PC freeze options, and thus, provide additional protection against slamming. The Commission should adopt these recommendations.

[3] NCL advocates the retention of PC freezes which are adequately and fairly described to consumers.

The Commission also seeks comments on whether the customer, who has frozen his IXC and then changes LECs, should request a new freeze or whether the new LEC must automatically establish the same PC freeze in the customer's behalf. NYSDPS, NCL, TOPC, and CBT assert that a subscriber's decision to change one service should not require the subscriber to take any action to preserve his choice as to other telecommunications services. Thus, the new LEC should automatically establish any pre-existing freezes. OCC agrees. These recommendations promote both consumer protection and competition.

USTA argues that subscribers should be able to place freezes on any telecommunications carrier. However, USTA argues that once the subscriber switches LECs, then the subscriber must request a new freeze. USTA surmises that the freeze does not follow the consumer. OCC applauds USTA's advocacy of customer control over individual telecommunications carriers. However, USTA misses the mark with its advancement of a new freeze request when the subscriber changes LECs. Such a measure does not give full effect to the choice that the subscriber has already made. Moreover, such a measure would place an additional, unnecessary step on the subscriber to implementation his choice of carrier. Customer control over telecommunications carriers necessarily includes effectuation of that customer's choice as to the authorized carrier.

AT&T also supports the application of the verification procedures to PC freezes. However, AT&T also recommends the adoption of market rules to ensure that new competitors are on a level playing field with the incumbent LECs. To that end, AT&T recommends that LECs should not be allowed to market freezes to their subscribers until

one year after intraLATA toll dialing parity is available throughout the LECs service territory.

OCC disagrees with the market rules proposed by AT&T. Customers would thus not be able to protect themselves against slamming for one year under AT&T's proposal. Such market rules would deprive customers of necessary protection against slamming and limit the customer's choice as to services. The Commission should reject the market rules proposed by AT&T.

LIABILITY OF SUBSCRIBERS TO CARRIERS (PARAS. 25-27)

All of the commenters to which OCC replies regarding the issue of liability of subscribers to carriers agree on one thing: the slammer should be denied any revenues. However, the commenters are aligned as expected regarding the question of whether subscribers should be absolved of liability for unauthorized service.

OCC supports the position advanced by commenters such as NYSDPS, NCL, TOPC, and the Public Staff, who advocate absolving subscribers from all liability associated with service from unauthorized carriers. Equity demands that such charges be eliminated, as subscribers' choice has not been implemented and the subscriber has gone to some efforts to reestablish the authorized service.[4]

The carriers, including Ameritech, AT&T, CBT, Sprint, as well as USTA advocate that the subscriber should not be absolved of liability for unauthorized services.

[4] In the event that the Commission is not persuaded that it is appropriate to absolve subscribers of all such charges, then OCC reluctantly supports, as does NYSDPS, the position that the monies for services from an unauthorized carrier should be remitted to the authorized carrier.

The carriers argue that absolving the customer of such liability would result in a windfall to the customer. Therefore, these commenters claim that the revenues should be payable to the authorized carrier. However, such a measure will be a blatant windfall for the authorized carrier who would have provided no service and, presumably, incurred no cost. It is most equitable that any windfall should inure to the subscriber who has been victimized by slamming.

AT&T adds that absolution would eviscerate the private enforcement remedies provided in Section 258(b). OCC disagrees. The private enforcement remedies hinge upon the act of slamming itself, not the payment of charges for unauthorized service. AT&T also argues that absolution would eliminate the deterrent mechanism that Congress enacted to control slamming. Again, AT&T misses the point. Absolution serves as an additional deterrent to the slammer, not an incentive to slam.

Sprint contends that the subscriber should simply be made whole. Sprint suggests that measures such as the following will make the subscribe whole: reimburse subscriber for carrier change charge; refund subscriber if charges of unauthorized carrier is more than those of unauthorized carrier for the slammed service; and restore premiums that would have been earned from authorized carrier.

OCC surely agrees with Sprint that the subscriber should be made whole. However, Sprint's recommendation as to how to achieve this is too limited. Sprint's recommendation ignores that the subscriber has been victimized by the slammer. The subscriber choice would have been ignored. Thus Sprint's recommendations do nothing to promote effectuation of the customer's choice.

CONCLUSION

OCC urges the Commission to consider and adopt the proposals contained herein and in OCC's Initial Comments as conclusions on these critical matters are reached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Comments of the Ohio Consumers' Counsel have been served by overnight delivery to Cathy Seidel of the Common Carrier Bureau, as well as to the International Transcription Service, this 29th day of September, 1997.

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